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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Appellant,

v.

JEFFREY LEWIS MOORE,

Defendant and Respondent.

D055498

(Super. Ct. No. SWF013034)

APPEAL from a judgment of the Superior Court of Riverside County,  
Helios J. Hernandez, Judge. Reversed and remanded with directions.

INTRODUCTION

A jury convicted Jeffrey Lewis Moore of various offenses related to an alleged domestic violence incident. The trial court granted Moore a new trial. The jury in the new trial could not reach a verdict on the charges against Moore and the trial court declared a mistrial. Prior to the third trial, Moore filed a motion requesting the trial court exercise its discretion under Penal Code section 1385 to dismiss the case in furtherance of justice. The trial court granted the motion.

On appeal, the People contend: (1) the dismissal is ineffective because the trial court did not state its reasons for the dismissal in its minute order, and (2) the dismissal constitutes an abuse of discretion. We conclude the first contention is correct and we reverse and remand the matter for further proceedings. In view of our conclusion, we do not address the second contention.

## DISCUSSION

"The judge or magistrate may, either of his or her own motion or upon the application of the prosecuting attorney, and in furtherance of justice, order an action to be dismissed." (Pen. Code, § 1385, subd. (a).) If the trial court dismisses an action under this code section, "[t]he reasons for the dismissal must be set forth in an order entered upon the minutes." (*Ibid.*) "The underlying purpose of this statutory requirement is "to protect the public interest against improper or corrupt . . . dismissals" and to impose a purposeful restraint upon the exercise of judicial power . . . ." (*People v. Bonnetta* (2009) 46 Cal.4th 143, 150.) Accordingly, "[a] century of judicial decision, looking to the Legislature's intent in enacting Penal Code section 1385, has construed its provisions to be 'mandatory,' so that an order of dismissal is ineffective in the absence of a written statement of reasons entered upon the minutes." (*Id.* at p. 146.) This is so even if we are able to discern the trial court's reasons from the record. (*Id.* at pp. 146, 149-150.)

Here, as the People correctly contend, the trial court's minute order from the hearing on Moore's motion to dismiss is silent as to trial court's reasons for granting the motion. Therefore, the dismissal is ineffective and the matter must be reversed and remanded back to the trial court to allow the trial court to state its reasons in a written

order entered upon the minutes or, if it chooses, to revisit the decision. (*Bonnetta, supra*, 46 Cal.App.4th at pp. 146, 153.)

#### DISPOSITION

The judgment is reversed and the matter is remanded to the trial court with directions to either set forth its reasons for dismissal in a written order entered upon the minutes, or to reconsider its decision and take appropriate action including, if necessary, proceeding as if the order had not been entered in the first instance.

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McCONNELL, P. J.

WE CONCUR:

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BENKE, J.

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NARES, J.